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Staff:	Randall Stemler
Staff Report:	April 30, 2004
Hearing Date:	May 13, 2004
Commission Action:	

STAFF REPORT: APPEAL

SUBSTANTIAL ISSUE & DE NOVO

APPEAL NO.:	A-1-MEN-03-069
APPLICANT:	Robert A. Hunt
AGENT:	Ed McKinley
LOCAL GOVERNMENT:	County of Mendocino
DECISION:	Approval with Conditions
PROJECT LOCATION:	At 28300 North Highway One, Inglenook, Mendocino County (APN 069-010-36).
PROJECT DESCRIPTION:	Construct a new 3,855-square-foot, single-family residence with a 3,245-square-foot garage below, for a total floor area of 7,100 square feet, and a maximum height of 18 feet above average natural grade, and 2,550 square feet of exterior patio. The project also includes a driveway, gate, well, propane and/or oil tanks, septic system and connection to utilities.

APPELLANT: Friends of The Ten Mile, Judith Vidaver

SUBSTANTIVE FILE: 1) Mendocino County CDB 31-93; and
DOCUMENTS 2) Mendocino County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

1. Summary of Staff Recommendation: Substantial Issue

The staff recommends that the Commission, after public hearing, determine that a substantial issue exists with respect to the grounds on which the appeal has been filed, and that the Commission hold a *de novo* hearing, because the appellant has raised a substantial issue with the local government's action and it's consistency with the certified LCP.

The development, as approved by the County, consists of construction of a new 3,855-square-foot, single-family residence with a 3,245-square-foot garage below, for a total floor area of 7,100 square feet, and a maximum height of 18 feet above natural grade, and 2,550 square feet of exterior patio. The project also includes a driveway, gate, well, propane and/or oil tanks, septic system, and connection to utilities. The project is located on the west side of Highway One, entirely within an area designated as highly scenic, approximately 1 mile south of the Ten Mile River.

The appellant makes six principal contentions that the project as approved by the County is inconsistent with the certified LCP. First, the appellant contends that the permitted development which is located in an area designated as highly scenic is not sited and designed to protect views to and along the ocean and scenic coastal areas, and trees required to be planted as visual screening for the development would also interfere with coastal and ocean views from public areas inconsistent with LUP Policies 3.5-1, 3.5-3, and CZC Section 20.504.015(C)(10).

Second, the appellant contends that the development as approved is inconsistent with the provisions of LUP Policy 3.5-1 and 3.5-3 that require that new development in highly scenic areas be compatible and subordinate to the character of its setting as it is too massive and its large amount of windows would reflect inordinate amounts of glare viewable from public access areas.

Third, the appellant contends that the development as approved is inconsistent with provisions of LUP Policy 3.5-4 because even though an alternative site exists, buildings would not be sited in, or near the edge of, a wooded area, but rather in a large open area.

Fourth, the appellant contends that the development as approved is inconsistent with the provisions of LUP Policy 3.5-1 that require new development to minimize the alteration of landforms because the project includes the excavation of 1,100 cubic yards of material to install a subterranean garage and workshop.

Fifth, the appellant contends that the development as approved is inconsistent with the provisions of LUP Policy 3.5-4 that limit structures in highly scenic areas to one story above natural grade as the approved house would locate a floor of the house above the garage.

Finally, the appellant contends that the development as approved is inconsistent with the LCP because the development as approved would allow exotic invasive plants to be introduced that would degrade adjacent environmentally sensitive habitat.

Staff recommends that the Commission find the project as approved by the County raises a substantial issue of conformance of the approved project with the policies of the LCP with respect to the following four (4) contentions raised by the appellant: (1) the permitted development would not be sited and designed to protect views to and along the ocean and scenic coastal areas inconsistent with LUP Policy 3.5-1; (2) the permitted development would not be subordinate to the character of its setting inconsistent with LUP Policy 3.5-3; 3) the permitted development would not be sited in, or near the edge of, a wooded area where an alternative site exists, but rather in a large open area inconsistent with LUP Policy 3.5-4; and (4) the permitted development would allow exotic invasive plants to be introduced that would degrade adjacent environmentally sensitive habitat inconsistent with LUP Policies 3.1-7, 3.1-10, and CZC Section 20.496.020.

Although the two other contentions of the appeal are based on valid grounds in that they raise allegations that the development does not conform to the policies and standards of the certified LCP and the public access policies of the Coastal Act, staff recommends that the Commission find that these contentions raise no substantial issue of conformance of the approved project with the policies of the LCP. The permitted development would minimize alteration of natural landforms as required by LUP Policy 3.5-1 because once the house is finished there would be no noticeable land form alteration. The permitted development is consistent with the requirement of LUP Policy 3.5-3 that new development west of Highway One in designated "highly scenic areas" be limited to one-story (above natural grade) because the garage and workshop would be constructed below the natural grade and only one story would be constructed above the natural grade.

The motion to adopt the staff recommendation of Substantial Issue is found on page 8.

2. Summary of Staff Recommendation De Novo: Denial

The staff recommends that the Commission deny the coastal development permit for the proposed project on the basis that, the project is inconsistent with the County's certified LCP policies related to the protection of visual resources.

The principal issues raised by the proposed development involve its conformance with the visual resource protection policies of the LCP. The project site is located within a highly scenic area that is largely undeveloped and surrounded by state park lands, agricultural and timber lands, and other open space in a spectacular setting with views of the ocean, coastal dunes, open grasslands, forested ridges and other wooded areas. The applicant has incorporated a number of features into the design of the proposed project to try and reduce the visual impact. Some of these features are extraordinary such as the proposed incorporation of a subterranean garage, involving costly excavation and design elements to ensure the project will only rise one story above the natural grade and to reduce the apparent size of the structure. In addition, the applicant has proposed extensive landscaping to create a visual screen of trees and shrubbery to hide the proposed development from view from Highway One. Also, the roofing and siding materials would be composed of fiberglass and Hardi-Shingle of dark earthtones, which would blend with the coastal prairie vegetation in the vicinity and thereby reduce their visual impact. The color of the stonework would appear to blend with the surroundings and not stand out.

However, even with these design features, the staff has concluded that the proposed project is inconsistent with the visual resources protection provisions of the certified LCP. The residential development as proposed would not be sited and designed to protect views to and along the coast as required by LUP Policies 2.5-1, 3.5-3 and CZC Section 20.504.015(C)(1) because it would block views to the ocean from Highway One. Additionally, trees planted to achieve visual screening of the proposed development from public views from Highway One would block additional views to the ocean from the highway inconsistent with CZC Section 20.504.015(C)(10). The landscaping would provide a thickly planted visual screen that would block public views to the ocean from Highway One for a length of nearly 500 feet.

In addition, the proposed development would not be compatible and subordinate to the character of the setting as required by LUP Policies 3.5-1, 3.5-3, and CZC Section 20.504.015(C)(3) because the surrounding area consists of State Park lands, open agricultural lands, and timber lands with very little development. The subject development would be the only residential structure within public view for many miles in any direction. The proposed residence would be prominent from both the Haul Road portion of the California Coastal Trail looking eastward, and other portions of the dunes of MacKerricher State Park that are traversed by trails utilized by the public. Additionally, the landscaping would place a very large swath of 30 to 90-foot-tall

coniferous trees in the coastal terrace prairie vegetation community dominated by low-growing grasses and brush and an adjoining open sand dune habitat resulting in both a visually and ecologically incompatible mismatch of vegetation types when viewed from Highway One. Rather than blending with the natural landscape, this development with its proposed landscape types that are incongruous with the surrounding landscape types within the field of view from Highway One would not be subordinate to the character of its setting. Furthermore, the residence as proposed includes a substantial amount of window glass that would very likely produce reflective surfaces for extended periods of time from mid-day to sunset as viewed from the Haul Road portion of the California Coastal Trail.

Moreover, the proposed development would be located in an open setting rather than within an approved alternate building envelope of the property near a wooded area, inconsistent with LUP Policy 3.5-4 and CZC Section 20.504.015(C)(5), which require that development in highly scenic areas be sited in or near wooded areas. An alternate building envelope exists near a grove of *Eucalyptus* and other trees that would allow for the residential development to be located near a wooded area on the property consistent with the aforementioned policies. The building envelope would also allow construction of a residence that would not be visible to the public looking east from the Haul Road, would not raise reflective window glare concerns, and also would not block views to the coast from Highway One.

There are no conditions that could be applied that could make the proposed project in the proposed location consistent with the visual resource protection provisions of LUP Policies 3.5-1, 3.5-3, 3.5-4, and CZC Section 20.504.015(C) as discussed above. The Commission could consider approving the project with conditions requiring the house to be relocated to the alternate building site where the residence could be developed consistent with the LCP. However, the design of the proposed house with its subterranean garage and other features are very specific to the originally proposed location and would not be the design that the property owner would likely choose to build in the alternate location. If the applicant chooses to build in the alternate building site, it would be appropriate for the applicant to submit a new application to the County for a house designed specifically for that site. Therefore, staff recommends that the Commission deny the coastal development permit application.

The Motion to adopt the Staff Recommendation of Denial is found on page 30.

STAFF NOTES

1. Appeal Process

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603).

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, within one hundred feet of a wetland or stream, within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff, or within a sensitive coastal resource area.

Furthermore, developments approved by counties may be appealed if they are not designated the “principal permitted use” under the certified LCP. Finally, developments constituting major public works or major energy facilities may be appealed whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access and public recreation policies set forth in the Coastal Act.

The subject development is appealable to the Commission because: (1) the approved development is located between the sea and the first public road paralleling the sea; and (2) the approved development is located within a sensitive coastal resource area. With regard to the appealability of the approved development based on its location in a sensitive coastal resource area, Section 20.308.110(6) of the Mendocino County Zoning Code and Section 30116 of the Coastal Act define sensitive coastal resource areas as “those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity,” including, among other categories, “highly scenic areas.” The approved development is located within an area designated in the LCP on the certified land use map as a “highly scenic area,” and, as such, is appealable to the Commission.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that the appeal raises no substantial issue of conformity of the approved project with the certified LCP. Since the staff is recommending substantial issue, unless three Commissioners object, it is presumed that the appeal raises a substantial issue and the Commission may proceed to its *de novo* review. If the Commission decides to hear arguments and vote on the substantial issue question,

proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised.

The only persons qualified to testify before the Commission on the substantial issue question are the applicant, the appellant, and persons who made their views known to the local government (or their representatives). Testimony from other persons regarding substantial issue must be submitted in writing.

Unless it is determined that there is no substantial issue, the Commission will proceed to the *de novo* portion of the appeal hearing and review the merits of the proposed project. This *de novo* review may occur at the same or subsequent meeting. If the Commission were to conduct a *de novo* hearing on the appeal, because proposed development is located between the first public road and the sea, the applicable test for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program and with the public access and public recreation policies of the Coastal Act.

2. Filing of Appeal.

The appellant filed their appeal (Exhibit No. 7) to the Commission in a timely manner on December 2, 2003 within 10 working days of receipt by the Commission on November 17, 2003 of the County's Notice of Final Action (Exhibit No. 6).

3. 49-Day Waiver.

Pursuant to Section 30621 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally issued coastal development permit is filed. On December 15, 2003, prior to the 49th day after the filing of the appeal, the applicant submitted a signed 49-Day Waiver waiving the applicant's right to have a hearing set within 49 days from the date the appeal had been filed.

PART ONE—SUBSTANTIAL ISSUE

I. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

Pursuant to Section 30603(b) of the Coastal Act and as discussed below, the staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal has been filed. The proper motion is:

MOTION

I move that the Commission determine that Appeal No. A-1-MEN-03-069 raises No Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

Staff Recommendation:

Staff recommends a **NO** vote. Failure of this motion will result in a *de novo* hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution To Find Substantial Issue:

The Commission hereby finds that Appeal No. A-1-MEN-03-069 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved project with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. APPELLANT'S CONTENTIONS

The Commission received one appeal of the County of Mendocino's decision to approve the single-family residence from Judith Vidaver on behalf of Friends of The Ten Mile. The project, as approved by the County, consists of construction of a new 3,855-square-foot, single-family residence with a 3,245-square-foot garage below, for a total floor area of 7,100 square feet, and a maximum height of 18 feet above average natural grade, and 2,550 square feet of exterior patio. The project also includes a driveway, gate, well, propane and/or oil tanks, septic system and connection to utilities. The appellant's contentions are summarized below, and the full text of the contentions is included in the copy of the appeal attached as Exhibit No. 7.

The appeal raises six principal contentions that the approved development is inconsistent with the County's certified LCP. First, the appellant contends that the permitted development which is located in an area designated as highly scenic is not sited and designed to protect views to and along the ocean and scenic coastal areas, and trees required to be planted as visual screening for the development would also interfere with

coastal and ocean views from public areas inconsistent with LUP Policies 3.5-1, 3.5-3, and CZC Section 20.504.015(C)(10).

Second, the appellant contends that the development as approved is inconsistent with the provisions of LUP Policy 3.5-1 and 3.5-3 that require that new development in highly scenic areas be compatible and subordinate to the character of its setting as it is too massive and its large amount of windows would reflect inordinate amounts of glare on public access areas.

Third, the appellant contends that the development as approved is inconsistent with LUP Policy 3.5-4 because even though an alternative site exists, buildings would not be sited in, or near the edge of, a wooded area, but rather in a large open area.

Fourth, the appellant contends that the development as approved is inconsistent with the provisions of LUP Policy 3.5-1 that require new development to minimize the alteration of landforms as the project includes the excavation of 1,100 cubic yards of material to install a subterranean garage.

Fifth, the appellant contends that the development as approved is inconsistent with the provisions of LUP Policy 3.5-4 that limit structures in highly scenic areas to one story above natural grade as the approved house would locate a floor of the house above the garage.

Finally, the appellant contends that the development as approved is inconsistent with the LCP because the development as approved would allow exotic invasive plants to be introduced that would degrade adjacent environmentally sensitive habitat.

B. LOCAL GOVERNMENT ACTION

On October 23, 2003 the Mendocino County Coastal Permit Administrator approved Coastal Development Permit No. 60-02. The County attached to its coastal permit twelve special conditions. Of these twelve conditions, those relevant to the contentions of the appeal are summarized below, and all are included in their entirety in Exhibit No. 6.

3. Prior to the issuance of the coastal development permit the applicant shall submit for the review and approval of the Coastal Permit Administrator, color samples for the exterior siding, trim, garage doors, downspouts and window frames, of the proposed residence. The colors shall be reviewed for consistency with Policy 3.5-1 of the Coastal Element and Sec. 20.504.015(C) of the Coastal Zoning Code. Specifically, the colors shall be dark earthtones which will blend with the coastal prairie vegetation in the vicinity. Tan, beige or other light colors shall not be appropriate. Metal chimney parts shall be a non-reflective dark color. All other building materials and finishes shall match those specified in the coastal development permit approval.

4. Any change in approved colors or materials shall be subject to the review and approval of the Coastal Permit Administrator for the life of the project.
5. Windows on the northwest and southwest sides of the residence shall be made of non-reflective glass.
6. Prior to the issuance of the coastal development permit, the applicant shall submit drawings or other information for the review and approval of the Coastal Permit Administrator showing that the [propane and/or oil] tanks will not be visually significant from public viewpoints. This may be accomplished by locating the tanks in an area that is out of public view, or by screening the tanks with fencing or landscaping.
7. Prior to obtaining a final building inspection, the landscaping and irrigation system described on the site Plan dated January 2003, and received by Planning and Building Services on April 23, 2003, shall be installed and inspected by the Planning Division. The landscaping is intended to provide visual screening of the project from Highway One. The Plant Legend and Irrigation System indicated on the plan shall be considered part of the landscaping. All required landscaping shall be irrigated, staked, maintained and replaced, as necessary, to ensure that they are established and maintained in perpetuity.
8. Prior to the installation of a new gate to replace the existing gate along Highway 1, the applicant shall submit for review and approval of the Coastal Permit Administrator plans and elevations showing the location and appearance of the new gate and any related development. The gate and entry shall comply with provisions in the Coastal Plan and Zoning Code regarding visual resources, fences, and any requirements of the California Department of Forestry and Fire Protection regarding width and setback from the highway. The material, colors and design of the gate shall be selected to be subordinate to its setting. Any work within the Highway 1 right-of-way shall comply with all encroachment permit provisions administered by Caltrans.
9. Prior to issuance of a building permit for the residence, the applicant shall submit a revised plot plan specifying that any new utility lines installed to serve the residence from the existing lines on the east side of the highway be installed underground across Highway 1 and to the residence.
10. No development or activity shall occur within the riparian or sand dune areas or the 100 foot buffers adjoining these areas without prior review by the Department of Planning and Building Services to determine that the development or activity is consistent with all provisions of the Coastal Plan and Coastal Zoning Ordinance for the protection of such environmentally sensitive habitat areas.

The decision of the Coastal Permit Administrator was not appealed at the local level to the County Board of Supervisors. The County then issued a Notice of Final Action, which was received by Commission staff on November 17, 2003 (Exhibit No. 6). The project was appealed to the Commission in a timely manner on December 2, 2003, within 10 working days after receipt by the Commission of the Notice of Final Local Action.

C. SITE DESCRIPTION

The subject property is an approximately 64 ½-acre parcel located on the west side of Highway One, about one mile south of Ten Mile River at 28300 North Highway One, Inglenook, Mendocino County (Exhibit Nos. 1, 2, 3, and 4). The location is within a designated highly scenic area in a sparsely populated region adjacent to the northern portion of MacKerricher State Park.

The L-shaped subject parcel has approximately one-half mile of frontage along Highway One, and extends west toward MacKerricher State Park approximately one-third mile into the Ten Mile Dunes. The sand dunes within the northernmost end of the State Park form the Inglenook Fen—Ten Mile Dunes Natural Preserve, which encompasses nearly 1,300 acres of coastal dunes within MacKerricher State Park that extend from Ward Avenue in the town of Cleone, north to the Ten Mile River. As defined in the Public Resources Code, “Natural preserves consist of distinct areas of outstanding natural or scientific significance established within the boundaries of other state park system units. The purpose of natural preserves shall be to preserve such features as rare or endangered plant and animal species and their supporting ecosystem. ...” The Ten Mile Dunes complex, which includes Inglenook Fen, is a natural heritage treasure of statewide significance. It is comprised of a unique, relatively pristine native dune and wetland ecosystem that supports three federally and state listed species including Western Snowy Plover (*Charadrius alexandrinus nivosus*), Menzies’ wallflower (*Erysimum menziesii* spp. *menziesii*), and Howell’s spineflower (*Chorizanthe howellii*), as well as over thirty special status plants that are sensitive species of concern. *Chorizanthe howellii* is found no where else in the world but in the dune systems in and around MacKerricher State Park. The Inglenook Fen, an ecological intermediate between a bog and a marsh, is the only known remaining coastal fen in California.

The subject property slopes at a gentle 8-9% grade toward the west, is located on the youngest geological coastal terrace, and includes coastal terrace prairie, sand dune, and riparian plant communities. The prairie land is very open, supporting mainly grasses, ferns, forbs, and brush. The sand dune community is mostly composed of un-stabilized sand with sparse vegetation. On the far-southwestern portion of the site there is a mature stand of *Eucalyptus* trees that were probably planted originally to arrest the eastward movement of the migrating sand dunes. Between the toe of the dunes and the prairie, there is a natural hedge of willow and wax myrtle. The riparian plant community is associated with a small, unnamed, east-to-west flowing drainage located approximately

halfway along the parcel's frontage with the highway. The drainage originates on the parcel immediately to the east of Highway One, enters the property through a culvert under the highway, and eventually disappears under the sand dunes to the west. Riparian species represented along this drainage include willow, wax myrtle, berries, brush, grasses and associated species. The sand dunes and riparian habitat constitute environmentally sensitive habitat areas (ESHA) on the property.

The property is located in an area designated as highly scenic, and the approved residence would be visible from Highway One, and from locations within MacKerricher State Park, including the Haul Road which runs north/south, about $\frac{3}{4}$ of a mile west of the subject property. This former logging road is now an approximately 8-mile segment of the California Coastal Trail that is "well established and open to the public" as described and mapped in the California Coastal Conservancy's January 2003 publication entitled *Completing the California Coastal Trail*. Additional trails used by the public serve as vertical access to the Haul Road, and as general entrance points into MacKerricher State Park and the Inglenook Fen— Ten Mile Dunes Natural Preserve. These trails originate along Highway One in the immediate vicinity of the subject parcel, particularly from the large pull out on the west side of Highway One known as the "mixing table" adjacent to the north end of the subject parcel, which is an area within the Caltrans right-of-way that is used for gravel storage and highway maintenance operations. Several trails lead west from the parking area at the "mixing table" through the coastal terrace prairie and sand dunes on State Park property and enable public access to the Ten Mile Dunes Natural Preserve, Haul Road portion of the California Coastal Trail, and shoreline. Although the Ten Mile Dunes Natural Preserve is an ecologically sensitive resource, and no dunes management plan has been adopted for this area, there are no current restrictions against accessing the park or Haul Road in this manner. In fact, the Department of Parks and Recreation has placed trail signage along vertical access locations at the mixing table to inform the public that they are on parkland.

The current configuration of the subject property was established by a boundary line adjustment (CDB 31-93) approved by the County with conditions on April 14, 1994, and not appealed to the Commission. This boundary line adjustment combined two separate legal parcels in the easterly portion of the adjacent ownership, and established the approximately 64 $\frac{1}{2}$ -acre subject property west of Highway One as a separate parcel. One of the conditions of approval required a map depicting building envelope buffers of 100 feet from the edge of all environmentally sensitive habitat areas to be on file with the Mendocino County Department of Planning and Building Services as mitigation for potential impacts to the various environmentally sensitive habitat areas including sand dunes and riparian areas. The condition also required that a notation be placed within the new legal description of the property stating that development be limited to that area designated as a building envelope as noted on the CDB 31-93 map on file with the County. In compliance with this condition of approval, two building envelopes were created as depicted on the map included as Exhibit No. 4. Both building envelopes are located along the eastern edge of the parcel within 50 feet of the highway. The

northernmost approved building envelope is the one in which the applicant's County-approved residential development would be constructed. This building envelope is a funnel-shaped area of nearly 143,000 square feet that touches the north property boundary with MacKerricher State Park at its narrowest dimension (approximately 50 feet), and observes 100-foot buffers from the sand dunes along the western edge, and along the approximately 400-foot-long southern edge that borders the riparian ESHA. The southernmost approved building envelope is a triangular-shaped area of nearly 78,000 square feet in size that provides an alternative building site on the property, and is located on the south side of the riparian ESHA with 100-foot buffers also protecting the riparian habitat to the north of it, and the sand dune habitat to the west of it. This alternative building envelope is situated between the highway and a mature grove of *Eucalyptus* trees that would block any public views of the ocean.

D. PROJECT DESCRIPTION

The project as approved would develop a new single-family residence encompassing 3,855 square feet of living space above a below-grade 3,245-square-foot garage, for a total floor area of 7,100 square feet. The maximum height of the structure would be no higher than 18 feet above average natural grade. The project also would include an approximate 500-foot length of driveway, gated at Highway One north of the residence, that would wind around the southeast side of the house leading to the underground 5-car garage complete with a storage and mechanical room, workshop, and full bathroom. Approximately 2,550 square feet of multi-level patio and retaining wall was approved along the northwest and southwest ocean-facing sides. The approved development includes a well, septic system, and fuel tank. Overhead electric and telephone lines would cross the highway from an existing 35 ½-foot-tall service pole located on the east side of the road to a new pole placed on the subject property, and from there would run underground to the residence. Approved landscaping for the development would provide partial visual screening from Highway One, and would consist of two groupings of Monterey cypress planted along the north and northeast sides of the residence, an approximately 350-foot-long row of shore pine that would be planted east of the house between the residence and the highway, and dwarf coyote brush plants that would be inter-planted amongst the existing coyote brush growing along the fence line between the residence and the highway. The total length of visual screen consisting of shore pine and Monterey pine planted along Highway One would be nearly 500 feet (Exhibit Nos. 3 and 5, Page 1).

The subject property is zoned Rangeland (RL) and Open Space (OS) with the boundary between these two zoning districts running roughly along the edge of the sand dunes. The approved single-family residence and related development would be located within the RL portion of the property and is a permitted use in the RL Zoning District.

E. SUBSTANTIAL ISSUE ANALYSIS

Section 30603(b)(1) of the Coastal Act states:

“The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.”

All six of the contentions raised in this appeal present potentially valid grounds for appeal in that they allege the project’s inconsistency with policies of the certified LCP or with the public access policies of the Coastal Act. The Commission finds that the contentions regarding the protection of views to and along the coast, ensuring new development is compatible and subordinate to the character of its setting, siting development in or near wooded areas rather than open areas, and the introduction of invasive exotic species raise a substantial issue for the reasons discussed below.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

“With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.”

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Cal. Code Regs., tit. 14, section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to the allegation below regarding the protection of views to and along the coast, ensuring new development is compatible and subordinate to the character of the setting, siting development in or near wooded areas rather than open areas, and the introduction of invasive exotic plants, the appeal raises a substantial issue of conformity of the approved project with the certified Mendocino County LCP. As further discussed below, the Commission finds that with respect to the allegations regarding the minimization of the alteration of landforms and limitation of the approved structure to one story above natural grade, the appeal raises no substantial issue of conformity of the approved development with the certified LCP or the access provisions of the Coastal Act.

Allegations Raising Substantial Issue

1. Development Not Sited and Designed to Protect Views

The appellant contends that the approved project is inconsistent with the County's certified LUP Policy 3.5-1, 3.5-3, and CZC Section 20.504.015(C)(10) requiring the permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas, and that trees proposed to be planted as visual screening for the development not interfere with coastal and ocean views from public areas.

LCP Policy:

Policy 3.5-1 states in applicable part:

The scenic and visual qualities of Mendocino County coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas...

LUP Policy 3.5-3 states in applicable part:

The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as "highly scenic areas," within which new development shall be subordinate to the character of its setting. Any development permitted in these areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails,

vista points, beaches, parks, coastal streams, and waters used for recreational purposes.

- *The entire coastal zone from the Ten Mile River estuary (including its wooded slopes, wetlands, dunes and ocean vistas visible from Highway 1) north to the Hardy Creek Bridge, except Westport Beach Subdivision which is a recognized subdivision containing parcels of approximately 20 acres in size covered by Policy 4.2-1 and is East of Highway 1.*

...

CZC Section 20.504.015(C)(10) states:

Tree planting to screen buildings shall be encouraged, however, new development shall not allow trees to interfere with coastal/ocean views from public areas.

Discussion:

LUP Policy 3.5-1 requires permitted development within highly scenic areas to be sited and designed to protect views to and along the ocean and scenic coastal areas. LUP Policy 3.5-3 requires that any development permitted in highly scenic areas provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes. CZC Section 20.504.015(C)(10) requires that trees planted for visual screening purposes not interfere with coastal views and/or ocean views from public areas.

The project as approved by the County would be located in an area designated as highly scenic, and would be visible from Highway One and from areas inside the adjacent MacKerricher State Park. For the public traveling north along Highway One, the approved residential development would be sited in a location that provides the first available views of Inglenook Fen—Ten Mile Dunes Natural Preserve within MacKerricher State Park. The approved house would have two levels with the lower (largely invisible) level excavated into the ground, resulting in a maximum height for the residence of less than 18 feet above average natural grade. The 3,855-square-foot upper level would present a 115-foot-long façade facing Highway One, but the majority of the residence would be below eye level as seen from the highway. Existing brush grows along both sides of the north/south fence line that demarks the boundary between the subject property and the Caltrans right-of-way appurtenant to Highway One, and this vegetation provides some visual screening for the approved development. However, because the residence is sited between the highway and the ocean in an otherwise open coastal terrace prairie, the County conditioned the permit to require additional landscaping to screen the development from public views toward the ocean. As required by the County, a double-row of shore pine trees planted at twenty-foot spacing would provide a thick, 20-30-foot-tall hedge for a distance of 350 feet along the highway between the residence and the road. Dwarf coyote brush was required to be planted in

openings along the fence line. This plant only grows to a height of 1-3 feet tall, and would not provide much visual screening of the approved project from Highway One. Fifteen Monterey cypress trees would be planted at 30-foot spacing in two groupings about 150 feet apart to provide visual screening on the north side of the house. Monterey cypress trees can reach 60-90 feet in height. This landscaping is included to screen and soften the appearance of the house for travelers coming from the north along Highway One. From the north, the house and required landscaping would not block views of the ocean, but would be viewed against a backdrop of *Eucalyptus* trees and natural landforms. However, the required landscaping would block views of the ocean for travelers coming from the south. The distance along Highway One that would be thickly screened with trees ranging in height from 20-90 feet would be about 500 feet (Exhibit Nos. 3 and 5, Page 1). This visual screening would completely block views of the approved residence as well as spectacular views of the ocean and sand dunes west of Highway One. Therefore, a substantial issue is raised with respect to the approved project's conformance with the provisions of CZC Section 20.504.015(C)(10) requiring that trees planted for visual screening purposes not interfere with coastal views and/or ocean views from public areas, and with the requirements of LUP Policy 3.5-1 and 3.5-3 that new development in highly scenic areas be sited and designed to protect views to and along the ocean and scenic coastal areas.

A popular coastal access trail known as the Haul Road runs the length of MacKerricher State Park following the old route of the historic steam railroad that transported redwood logs to be milled in Fort Bragg. As described previously, the Haul Road runs north/south, about $\frac{3}{4}$ of a mile west of the subject property. This public trail is an approximately 8-mile segment of the California Coastal Trail that is "well established and open to the public," as described and mapped in the California Coastal Conservancy's January 2003 publication entitled *Completing the California Coastal Trail*. The subject property can be seen looking east from the Haul Road along the section of trail just north of Inglenook Creek, and continuing north along the trail for a distance of over half a mile. Public views in this direction are also afforded from places within the State Park between the Haul Road and Highway One. As discussed previously, several trails lead west from the Highway One parking area at the "mixing table" through the coastal terrace prairie and sand dunes on State Park property and enable public access to the Ten Mile Dunes Natural Preserve, Haul Road portion of the California Coastal Trail, and shoreline. Although the Ten Mile Dunes Natural Preserve is an ecologically sensitive resource, and no dunes management plan has been adopted for this area, there are no current restrictions against accessing the park or Haul Road in this manner. Many people currently use these vertical access trails to enter State Parkland, and the Department of Parks and Recreation has placed trail signage at this location to inform the public that they are on State Park property.

The subject development would be the only residential structure within public view for many miles in any direction. As approved by the County, the side of the house facing the ocean and Haul Road portion of the California Coastal Trail would contain numerous

windows along a nearly continuous row representing a significant glass surface area of more than 400 square feet. Because much of the Haul Road is located to the west and southwest of the approved residence, the potential for glare off the windows from the late afternoon sun is significant. Therefore, a substantial issue is raised with respect to the approved project's conformance, and with the requirements of LUP Policy 3.5-1 and 3.5-3 that new development in highly scenic areas be sited and designed to protect views to and along the ocean and scenic coastal areas.

LUP Policy 3.5-1 requires permitted development to be sited and designed to protect views to and along the ocean and scenic coastal areas. The approved development would block views to the ocean from Highway One, inconsistent with that requirement. The significance of the coastal visual resource affected by the County's approval is great, since residential development in the location would affect spectacular views from a scenic highway, State Park, and portion of the California Coastal Trail. As described above, the approved site location provides the first available views of the Inglebrook Fen—Ten Mile Dunes Natural Preserve within MacKerricher State Park. The area is sparsely populated, with expansive views of the sand dunes and shoreline that are stunning. Therefore, the Commission finds that the contention raised by the appellant raises a substantial issue of conformance of the approved project with the requirements of CZC Section 20.504.015(C)(10) that trees planted for visual screening purposes not interfere with coastal views and/or ocean views from public areas, and with the requirements of LUP Policies 3.5-1 and 3.5-3 that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas.

2. Development Not Subordinate to the Character of its Setting

The appellant contends that the project as approved by the County does not conform to LUP Policies 3.5-1 and 3.5-3, which require that within highly scenic areas, new development must be subordinate to the character of its setting, and protect ocean and coastal views from public areas including highways, coastal trails, beaches, and parks. The appellant believes that the approved project is not subordinate to its setting, that it blocks views to the ocean from Highway One, and is highly visible from public areas within the State Park. The appellant states that it is “out of character w/ the surrounding undeveloped scenic area and would set a precedent for future development of massive structures.” The appellant further adds that the approved project was “presented as the equivalent to a one-story structure so as to minimize its size. Even if it was only one-story, at 2,855 sq. ft. plus 2,550 sq. ft. patio, plus tanks, plus stone gate, it is humongous—way larger than anything in the vicinity— and completely out of character with the setting.”

LCP Policy:

Policy 3.5-1 states in applicable part:

New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting.

LUP Policy 3.5-3 states in applicable part:

The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as “highly scenic areas,” within which new development shall be subordinate to the character of its setting. Any development permitted in these areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.

- *The entire coastal zone from the Ten Mile River estuary (including its wooded slopes, wetlands, dunes and ocean vistas visible from Highway 1) north to the Hardy Creek Bridge, except Westport Beach Subdivision which is a recognized subdivision containing parcels of approximately 20 acres in size covered by Policy 4.2-1 and is East of Highway 1.*

...

[Note: The foregoing portion of LUP Policy 3.5-3 is implemented verbatim in Coastal Zoning Code Section 20.504.020(A)(4)]

Discussion:

LUP Policies 3.5-1, 3.5-3 and CZC Section 20.504.020(A)(4) require that new development be subordinate to the character of its setting, and that any development permitted in highly scenic areas provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes. Pursuant to LUP Policy 3.5-3, new development must be subordinate to the natural setting and minimize reflective surfaces. The subject property is within an area designated as highly scenic.

As discussed above, the project as approved by the County would be visible from both the Haul Road portion of the California Coastal Trail looking eastward, and from Highway One blocking views toward the ocean. The required landscaping would provide a visual screen consisting of thickly planted shore pine and Monterey cypress at a height of 30-90 feet for a length of nearly 500 feet along Highway One. Although intended to block views of the residential structures from the highway, the required landscaping would also block public views to the ocean from Highway One. Additionally, the

landscaping requirement of the approved development would place a very large swath of tall coniferous trees in the coastal terrace prairie vegetation community between the highway and the residence resulting in both a visually and ecologically incompatible mismatch of vegetation types. The landscape screening would appear to be an incongruous island of trees surrounded by low growing grasses and brush associated with the coastal terrace prairie and sand dunes. This incongruity of landscape types would make the development as approved insubordinate to the character of its setting. As discussed above, public views of the approved development would also be available from the Haul Road portion of the California Coastal Trail, and from locations within the State Park property between Highway One and the Haul Road that are accessible to the public.

Furthermore, as noted above, the residence as approved by the County authorized a substantial amount of window glass that would very likely produce reflective surfaces for extended periods of time from mid-day to sunset as viewed from the Haul Road portion of the California Coastal Trail. The character of the surrounding area is distinctive for its openness and unique expanse of sand dune habitat. Looking southeast (landward) from the Haul road toward the subject parcel, the stand of *Eucalyptus* trees on the subject property blends into an unbroken swath of coastal forest to the south, with a view of the Ten Mile Dunes in the foreground. Looking to the northeast (landward) from the Haul Road toward the subject parcel, the Ten Mile Dunes in the foreground are set against forested hills and rolling grasslands further in the background east of Highway One. Though they appear small, the story poles where the County has approved the residential structure are visible with the naked eye from the Haul Road. The construction of a house in this location raises a substantial issue as to whether the development as approved would be subordinate to the character of the existing natural setting since there are no other residential structures visible in the vicinity, and only minimal agriculturally related structures in the vicinity.

Although there are no other residential structures visible in the nearby vicinity, the natural setting would be affected by a nearby development proposal that has been approved but not yet built. On May 12, 1998, the Commission approved with conditions a 20-unit visitor serving facility on property located immediately east of the subject parcel across Highway One. This approved development consists of seven separate buildings that would serve as the guest rooms, two with five units each, and five with two units each. A managers residence, reception area, and meeting room would be contained within a separate two-story structure with an observation deck at the second floor level. Another separate building would provide a laundry, storage, and employee facilities. The approved project would be set back from the highway about 300 feet, and the buildings would be arranged along the contour of the slope at a height of approximately 30 feet above the height of the highway at the driveway entrance (Exhibit No. 3). The visitor-serving facility site would be partially screened from view to the east along much of the highway frontage by roadside shrubs, but would be visible for about a half-mile stretch of highway, mostly north of the driveway entrance, and mostly for southbound motorists.

In approving the project, the Commission found that the inn would include several two-story structures with barn-type rooflines consistent with the surrounding rural, agricultural area, but imposed several special conditions to further reduce adverse visual impacts of the development on scenic coastal resources. So that the proposed structures would be screened from Highway One, consistent with LUP Policy 3.5-5, the Commission attached Special Condition No. 2, which included a tree maintenance program and required submittal of a landscaping plan that provides for the planting of an evergreen screen of drought-tolerant native or naturalized trees and/or shrubs along the western property line and along the north-facing side of the structures and parking lot to screen the project from views along Highway One. When screened from view, the proposed development will be barely visible from Highway One and would appear in character with the surrounding undeveloped area and landscape as views from the west are toward the tree covered hillsides that form the backdrop to the inn's setting. The approved landscape plan requires 20 shore pine trees to be planted along the western fence line of the property. As mentioned earlier, shore pine can grow to a height of 20-30 feet.

The combination of landscaping measures required to visually screen both the 20-unit visitor serving facility east of the highway previously approved by the Commission, and the subject single-family residence now approved by the County west of the highway would substantially screen from public view the 20-unit visitor serving facility looking from the Haul Road portion of the California Coastal Trail, and points within the State Park between the Haul Road and Highway One. Therefore, only the single-family residence that is the subject of the current appeal would be substantially visible from the Haul Road trail and other locations within the park as a conspicuous development in the vicinity.

There is a high likelihood that the glass windows set at many different angles in numerous rooms of the approved house would reflect the sun throughout the mid to late afternoon (Exhibit No. 5, Pages 4 and 5). As the sun's angle of incidence changes during the afternoon, the sequenced window reflection from the approved development would be long lasting. The County's staff report indicated a concern about the amount of reflective window glass and the structural siting and design of the house in this regard. The County staff report states: "The elevation drawings for the residence show a substantial amount of glass on the northwest and southwest elevations. With the State Park to the west of the site, there is a high probability that glaring reflections of sunlight could be visible from the Haul Road and beach late in the day when the sun is near the horizon." Although the County imposed a special condition requiring the use of non-reflective glass, such glass mutes but does not eliminate the direct reflection of the sun's rays. The windows would still be reflective surfaces. Therefore, a substantial issue is raised as to the conformity of the approved project with the requirements of LUP Policy 3.5-3 that new development be subordinate to the natural setting and minimize reflective surfaces.

The significance of the coastal scenic resource that would be affected by the County's approval is great, since residential development in the location would affect spectacular views from a scenic highway, State Park, and portion of the California Coastal Trail. As described above, the approved site location provides the first views of the Inglenook Fen—Ten Mile Dunes Natural Preserve within MacKerricher State Park. The area is sparsely populated, with expansive views of the sand dunes and shoreline that are stunning. Therefore, the Commission finds that the contention raised by the appellant that the approved development is not subordinate to the character of its setting raises a substantial issue of conformance of the approved project with the requirements of LUP Policies 3.5-1, 3.5-3 and CZC Section 20.504.015(A)(4) that new development be subordinate to the character of its setting; and with the requirements of LUP Policy 3.5-3 that new development and minimize reflective surfaces.

3. New Development in Highly Scenic Area to be Sited In or Near the Edge of Wooded Area if Available Rather Than in Large Open Area.

The appellant contends that the project as approved is inconsistent with the requirements of LUP Policy 3.5-4 that if an alternative site exists, new development in highly scenic areas is to be sited near the edge of a wooded area, and avoid development in the middle of large open areas. The appellant states that there is an alternate building site out of the public viewshed just south of the proposed site, on the other side of the riparian area.

LCP Policies:

LUP Policy 3.5-4 states in applicable part:

Buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. Except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists.

...

Minimize visual impacts of development on terraces by (1) avoiding development in large open areas if alternative site exists; (2) minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms; (3) provide bluff setbacks for development adjacent to or near public areas along the shoreline; (4) design development to be in scale with rural character of the area [emphasis added].

CZC Section 20.504.015(C) establishes development criteria for designated highly scenic areas, providing in applicable part:

...

(3) New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials including siding

and roof materials shall be selected to blend in hue and brightness with their surroundings

...

(5) *Buildings and building groups that must be sited in highly scenic areas shall be sited:*

- (a) *Near the toe of a slope;*
- (b) *Below rather than on a ridge; and*
- (c) *In or near a wooded area* [emphasis added].

...

(7) *Minimize visual impacts of development on terraces by the following criteria:*

- (a) *Avoiding development, other than farm buildings, in large open areas if alternative site exists;*
- (b) *Minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms;*
- (c) *Provide bluff setbacks for development adjacent to or near public areas along the shoreline* [emphasis added];
- (d) *Design development to be in scale with rural character of the area. ...*

Discussion:

LUP Policy 3.5-4 and CZC Section 20.504.015(C) state that if an alternative site exists, buildings that must be sited within a highly scenic area shall be sited in or near the edge of a wooded area and concentrated near existing major vegetation rather than in the middle of large open areas. As described above, the project as approved involves development of a residence in an open coastal terrace prairie setting (Exhibit No. 8). The property also has forested areas where the residence could have been sited in proximity, consistent with the LUP Policy 3.5-4 provision requiring buildings that must be sited within a highly scenic area to be sited in or near the edge of a wooded area rather than in the middle of large open areas (Exhibit No. 3).

In 1994, as a condition of the County-approved Coastal Development Boundary Line Adjustment that established the subject parcel in its current configuration, two building envelopes were delineated for the subject property for purposes of protecting ESHA (Exhibit No. 4). The two building envelopes had not yet been evaluated for the purposes

of visual resource protection. The approved building site for the development that is the subject of the current appeal is located in the more northerly building envelope situated in the open coastal terrace prairie bounded on the west and north by extensive coastal sand dunes comprising the Inglenook Fen—Ten Mile Dunes Natural Preserve and MacKerricher State Park, on the south by a riparian zone, and on the east by Highway One. The other approved building envelope for the property is situated to the south and is bounded on the west by a tall stand of *Eucalyptus* trees, on the north by a riparian zone, and on the east by Highway One. The public views that would be affected by development occurring on the more northerly building envelope would be significantly different than for development on the southerly building envelope. While the northerly building envelope is located in a very open setting with the State Park sand dunes and ocean in the background as viewed west from Highway One, the southerly building envelope is located in a wooded setting with a thick stand of mature *Eucalyptus* trees in the immediate background and no view of the ocean or sand dunes from the highway. The approved residential development in the northern building envelope would be very prominent looking south from certain areas within the Inglenook Fen—Ten Mile Dunes Natural Preserve and MacKerricher State Park, and looking east from the Haul Road. In contrast, development in the southern building envelope would be well screened from public views by the *Eucalyptus* grove and the strip of riparian vegetation growing between that building envelope and the park.

The County approved the siting of the development in the more open northerly building envelope rather than in the southerly building envelope near the edge of a wooded area. The County's findings for approval do not discuss the alternate site or the conformance of the project as approved with the provisions of LUP Policy 3.5-4 and CZC Section 20.504.015(C) that require that if an alternative site exists, new development in highly scenic areas is to be sited in or near the edge of a wooded area, rather than in the middle of large open areas.

The Commission finds that the degree of factual and legal support for the County's action is low, given that the project was approved without an evaluation of siting the development in the alternative building envelope near a wooded area, where the visual impacts would be significantly reduced, contrary to the requirement that if an alternative site exists, buildings sited within a highly scenic area shall be sited in or near the edge of a wooded area rather than in the middle of large open areas. Additionally, the significance of the coastal visual resource affected by the County's approval is great, since residential development in the location as approved by the County would affect spectacular views from Highway One, which is a scenic highway, from within the Inglenook Fen—Ten Mile Dunes Natural Preserve and MacKerricher State Park, and from a portion of the California Coastal Trail. Therefore, the Commission finds that the appeal raises a substantial issue of conformance of the approved project with the provisions of LUP Policy 3.5-4 and CZC Section 20.504.015(C) requiring that if an alternative site exists, buildings that must be sited within a highly scenic area be sited in, or near the edge of, a wooded area rather than in the middle of large open areas.

4. Protection of ESHA From Invasive Exotic Vegetation

The appellant contends that the project as approved is inconsistent with LCP policies and standards that protect ESHA from invasive exotic vegetation introduced to the site from landscape plantings.

LCP Policies:

LUP Policy 3.1-7 in applicable part states:

A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. ...

LUP Policy 3.1-10 states:

Areas where riparian vegetation exists, such as riparian corridors, are environmentally sensitive habitat areas and development within such areas shall be limited to only those uses which are dependent on the riparian resources. All such areas shall be protected against any significant disruption of habitat values by requiring mitigation for those uses which are permitted. No structure or development, including dredging, filling, vegetation removal and grading, which could degrade the riparian area or diminish its value as a natural resource shall be permitted in the Riparian Corridor except for:

- *Channelizations, dams, or other substantial alterations of rivers and streams as permitted in Policy 3.1-9;*
- *pipelines, utility lines and road crossings, when no less environmentally damaging alternative route is feasible;*
- *existing agricultural operations;*
- *removal of trees for disease control, public safety purposes, or for firewood for the personal use of the property owner at his or her residence. Such activities shall be subject to restrictions to protect the habitat values* [emphasis added].

Section 20.496.020 of the Coastal Zoning Ordinance states in applicable part:

ESHA- Development Criteria

- (A) *Buffer areas. A buffer shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from*

degradation resulting from future developments and shall be compatible with the continuance of such habitat areas. ...

Discussion:

LUP Policy 3.1-7 requires that buffers be established to protect ESHA from significant degradation resulting from future developments on the property. LUP Policy 3.1-10 requires that riparian ESHA be protected against any significant disruption of habitat values. CZC Section 20.496.020 requires that buffers be established to protect the environmentally sensitive habitat from degradation resulting from future developments and shall be compatible with the continuance of such habitat areas.

The appellant contends that the landscaping plan approved by the County includes species that could harm adjacent ESHA, both on the property and on ecologically sensitive habitat within the adjacent State Park. The appellant states that Monterey cypress, approved by the County for visual screening on the subject property, is an invasive exotic that would spread into the adjacent parkland. Monterey cypress is not native to the area, but it is commonly found in Mendocino County and is not considered an invasive plant by the California Native Plant Society and other reputable sources. In addition, no invasive exotic vegetation was approved in the landscape plan for the property. However, the Commission notes that the County did not impose any special conditions prohibiting the planting of invasive exotic species as landscaping for the residential development. If invasive exotic vegetation were used as part of the landscaping for the residential development, these species could easily spread to the riparian and dune habitat and out-compete rare plants that might exist in the area.

The significance of the coastal resource affected by the County's approval is great, since planting of invasive exotic vegetation on the subject property could jeopardize ESHA resources on both the applicant's property and on the adjacent State Park property where numerous protected rare plant species have been identified. Therefore, the Commission finds that the project as approved by the County raises a substantial issue of conformance with the provisions of LUP Policy 3.1-7, 3.1-10, and CZC Section 20.496.020 requiring protection of ESHA from significant degradation, significant disruption of habitat values, and from degradation resulting from future developments. Furthermore, the Commission need not do an exhaustive analysis of why this contention raises a substantial issue, because whether or not this contention raises a substantial issue, the result would not affect the Commission's determination that the grounds for appeal raised with respect to the protection of views to and along the coast, ensuring that new development is compatible and subordinate to the character of its setting, and siting development in or near wooded areas rather than open areas, raise a substantial issue of conformance of the project as approved with the certified LCP.

Appellant's Contentions that Do Not Raise a Substantial Issue

1. Minimization of Alteration of Natural Landforms

The appellant contends that the project as approved would alter natural landforms inconsistent with LUP Policy 3.5-1 requiring the alteration of natural land forms to be minimized.

LCP Policies:

LUP Policy 3.5-1 in applicable part states:

Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas
[emphasis added]...

Discussion:

LUP Policy 3.5-1 requires that permitted development be sited and designed to minimize the alteration of natural landforms. The appellant contends that the project as approved by the County "alters natural land forms by excavating 1,100 cu. yds. of material, 200 cu. yds. of which will be used as fill under a terraced patio." This excavation would allow the construction of a 3,245-square-foot subterranean garage/workshop/storage area, with parking for at least five cars. Minor grading would occur for construction of the driveway. Even though the underground excavation would modify the natural land form at the project site by digging a big hole for the lower level of the residential structure, once the house is finished, there would be no noticeable land form alteration because the lower level would be hidden underground. The minor grading for construction of the driveway would not be considered significant alteration of the natural landform.

Therefore, the Commission finds that the project as approved by the County does not raise a substantial issue of conformance with the provisions of LUP Policy 3.5-1 requiring that permitted development be sited and designed to minimize the alteration of natural landforms. Furthermore, the Commission need not do an exhaustive analysis of why this contention does not raise a substantial issue, because whether or not this contention raises a substantial issue, the result would not affect the Commission's determination that the grounds for appeal raised with respect to the protection of views to and along the coast, ensuring that new development is compatible and subordinate to the character of its setting, siting development in or near wooded areas rather than open areas, and the introduction of exotic invasive plants raise a substantial issue of conformance of the project as approved with the certified LCP.

2. Limitation of Approved Structure to One Story Above Natural Grade

The appellant contends that the project as approved would be inconsistent with the provisions of LUP 3.5-3 that require new development west of Highway One in designated "highly scenic areas" to be limited to one-story (above natural grade).

LCP Policies:

LUP Policy 3.5-3 states in applicable part:

In addition to other visual policy requirements, new development west of Highway One in designated "highly scenic areas" is limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures [emphasis added].

Discussion:

LUP Policy 3.5-3 requires new development west of Highway One in designated "highly scenic areas" to be limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. The appellant contends that the project as approved by the County is two stories tall, with the upper floor consisting of the living space, and the lower floor consisting of the 5-car garage and workshop. The appellant asserts that because the subject site is located in a highly scenic area, LUP Policy 3.5-3 requires only a one-story structure to be constructed unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. The Commission notes that LUP Policy 3.5-3 actually says that new development west of Highway One in designated highly scenic areas must be limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Since the lower story consisting of the garage and workshop would be excavated below ground level, the elements of the structure above natural grade would only be one story.

Therefore, the Commission finds that the project as approved by the County does not raise a substantial issue of conformance with the provisions of LUP Policy 3.5-3 requiring new development west of Highway One in designated "highly scenic areas" be limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Furthermore, the Commission need not do an exhaustive analysis of why this contention does not raise a substantial issue, because whether or not this contention raises a substantial issue, the result would not affect the Commission's determination that the grounds for appeal raised with respect to the protection of views to and along the coast, ensuring that new development is compatible and subordinate to the character of its setting, and siting development in or near wooded areas rather than open areas, and the introduction of

exotic invasive plants, raise a substantial issue of conformance of the project as approved with the certified LCP.

Conclusion of Part One: Substantial Issue

The Commission finds that, as discussed above, the project as approved by the County raises a substantial issue with respect to the conformance of the approved project with the policies of the LCP regarding: regarding the protection of views to and along the coast, ensuring new development is compatible and subordinate to the character of the setting, siting development in or near wooded areas rather than open areas, and the introduction of invasive exotic plants

PART TWO—*DE NOVO* ACTION ON APPEAL

Staff Notes:

1. Procedure

If the Commission finds that a locally approved coastal development permit raises a Substantial Issue with respect to the policies of the certified LCP, the local government's approval no longer governs, and the Commission must consider the merits of the project with the LCP *de novo*. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application. Since the proposed project is within an area for which the Commission has certified a Local Coastal Program, and is located between the first public road and the sea, the applicable standard of review for the Commission to consider is whether the development is consistent with Mendocino County's certified Local Coastal Program (LCP) and the public access and recreation policies of the Coastal Act. Testimony may be taken from all interested persons at the *de novo* hearing.

2. Incorporation of Substantial Issue Findings

The Commission hereby incorporates by reference the Substantial Issue Findings above.

I. MOTION, STAFF RECOMMENDATION, AND RESOLUTION

Pursuant to Section 30625 of the Coastal Act and as discussed below, the staff recommends that the Commission determine that the development does not conform to the standards set forth in the certified local coastal program and the public access policies of the Coastal Act and **deny** the permit. The proper motion is:

MOTION: **I move that the Commission approve Coastal Development Permit No. A-1-MEN-03-069 for the development proposed by the applicant.**

Staff Recommendation of Denial:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Deny the Permit:

The Commission hereby **denies** a coastal development permit for the proposed development on the ground that the development will not conform with the policies of the certified LCP and the public access policies of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS FOR DENIAL

The Commission hereby finds and declares:

A. PROJECT AND SITE DESCRIPTION

The Substantial Issue portion of this report is hereby incorporated by reference.

B. ANALYSIS OF LCP CONSISTENCY

The project as proposed is consistent with certain LCP provisions, including provision of adequate utilities requiring demonstration of an adequate site for on-site sewage treatment and the availability of water. In addition, with the attachment of a special condition precluding the planting of invasive exotic vegetation, the project as proposed would be consistent with the LCP provisions requiring the protection of environmentally sensitive habitat. However, as discussed below, the Commission is denying the proposed residential development because it would be inconsistent with certified LCP provisions intended to protect visual resources, including protection of views to and along the coast, ensuring new development is subordinate to the character of the setting, and siting development in or near wooded areas rather than open areas. These development inconsistencies cannot be resolved by condition.

1. **Protection of Visual Resources**

a. **Protection of Views To and Along the Coast**

LCP Policies

Policy 3.5-1 states in applicable part:

The scenic and visual qualities of Mendocino County coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas...

LUP Policy 3.5-3 states in applicable part:

The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as “highly scenic areas,” within which new development shall be subordinate to the character of its setting. Any development permitted in these areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.

- *The entire coastal zone from the Ten Mile River estuary (including its wooded slopes, wetlands, dunes and ocean vistas visible from Highway 1) north to the Hardy Creek Bridge, except Westport Beach Subdivision which is a recognized subdivision containing parcels of approximately 20 acres in size covered by Policy 4.2-1 and is East of Highway 1 [emphasis added].*

...

CZC Section 20.504. 015(A)(2) states:

(A) *The visual resource areas listed below are those which have been designated highly scenic and in which development shall be subordinate to the character of its setting.*

(1) ...

(2) *Portions of the Coastal Zone within the Highly Scenic Area west of Highway 1 between the Ten Mile River estuary south to the Navarro River as mapped with noted exceptions and inclusions of certain areas east of Highway 1.*

CZC Section 20.504.015(C)(1) states:

Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.

CZC Section 20.504.015(C)(10) states:

Tree planting to screen buildings shall be encouraged, however, new development shall not allow trees to interfere with coastal/ocean views from public areas.

Discussion

LUP Policy 3.5-1 protects the scenic and visual qualities of Mendocino County coastal areas as a resource of public importance. LUP Policies 3.5-1 and 3.5-8 and CZC Section 20.504.015(C)(1) require permitted development to be sited and designed to protect views to and along the ocean and scenic coastal areas. Views are required to be protected from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes. CZC Section 20.504.015(C)(10) encourages tree planting to screen buildings associated with new development, but prohibits such planting from interfering with coastal/ocean views from public areas.

As described above, the project proposal would develop an 18-foot-high, two-level, 7,100-square-foot single-family residence and garage in a location west of Highway One designated highly scenic (Exhibit Nos. 1, 2, 3, and 5). The single-family residence as proposed would be visible from Highway One and from areas within the adjacent MacKerricher State Park, including the Inglenook Fen-Ten Mile Dunes Natural Preserve. The proposed development would also be visible from portions of the Haul Road located to the west of the subject property, which is a very popular coastal access trail forming an approximately 8-mile segment of the California Coastal Trail (Exhibit No. 8). The subject development would be the only residential structure within public view from these vantage points for many miles in any direction.

For the public traveling north along Highway One, the proposed residential development would be sited in a location that provides the first available views toward the west of the Inglenook Fen—Ten Mile Dunes Natural Preserve within MacKerricher State Park. Existing brush grows along both sides of the north/south fence line that demarks the boundary between the subject property and the Caltrans right-of-way appurtenant to Highway One. Two or three small trees, some willow brush, and a few tall cypress are growing within this brushy

strip in widely scattered locations. Although this brush affects the lower portion of one's view from Highway One toward the ocean, and the scattered trees that exist within this strip of brushy vegetation block somewhat more view, views for northbound travelers on Highway One are still afforded over the top of the vast majority of the brushy vegetation of the dunes and the ocean beyond. The proposed house would have two levels with the lower (largely invisible) level excavated into the ground to provide an underground five-car garage and workshop. The 3,855-square-foot upper level of the residence would present a 115-foot-long façade, as close as approximately 62 feet from, and facing, the Highway One scenic corridor. While the majority of the residence would be below eye level as seen from the highway, it would still be an intrusive structure adversely blocking views toward the ocean from Highway One and adversely impacting public views along the scenic coastline in the vicinity of MacKerricher State Park where no other residential development currently exists in the vicinity.

In an effort to augment the strip of brushy vegetation growing along the highway right-of-way boundary and thereby provide a visual screen of the proposed development from Highway One, the applicant is proposing to plant an approximately 500-foot-long swath of trees between the highway and the residence (Exhibit Nos. 3 and 5, Page 1). This visual screen would be composed of a double-row of shore pine planted for a distance of approximately 350 feet, and the remaining distance would be planted with fifteen Monterey cypress trees in two groupings about 150 feet apart. Dwarf coyote brush would be planted to fill in openings along the fence line. Shore pine can reach a vertical height at maturity of 20 to 30 feet tall. Monterey cypress can reach 60 to 90 feet in height at maturity. The landscaping proposed as a visual screen would provide a high degree of privacy for the residence. However, the thick swath of trees and brush planted as a visual screen would completely block public views of the ocean from Highway One for a distance of approximately 500 feet inconsistent with LUP Policies 3.5-1, 3.5-3, and CZC Section 20.504.015(C)(1) requiring the protection of views to and along the ocean and scenic coastal areas. In addition, as the proposed vegetative screen would interfere with coastal and ocean views from the public highway, the project as proposed is inconsistent with CZC Section 20.504.015(C)(10).

As described previously, a popular coastal access trail known as the Haul Road runs the length of MacKerricher State Park following the old route of the historic steam railroad that transported redwood logs to be milled in Fort Bragg. The Haul Road runs north/south, about $\frac{3}{4}$ of a mile west of the subject property, and forms an approximately 8-mile segment of the California Coastal Trail that is "well established and open to the public," as described and mapped in the California Coastal Conservancy's January 2003 publication entitled *Completing the California Coastal Trail*. The proposed residential development on the subject property would be seen looking east from the Haul Road along the section

of trail just north of Inglenook Creek, and continuing north along the trail for a distance of over half a mile. Public views in this direction are also afforded from places within the State Park between the Haul Road and Highway One. As discussed previously, several trails lead west from the Highway One parking area at the “mixing table” through the coastal terrace prairie and sand dunes on State Park property and enable public access to the Ten Mile Dunes Natural Preserve, Haul Road portion of the California Coastal Trail, and shoreline. Although the Ten Mile Dunes Natural Preserve is an ecologically sensitive resource, and no dunes management plan has been adopted for this area, there are no current restrictions against accessing the park or Haul Road in this manner. Many people currently use these vertical access trails to enter State Parkland, and the Department of Parks and Recreation has placed trail signage at this location to inform the public that they are on State Park property.

From these vantage points, the subject development would be the only residential structure within public view for many miles in any direction. The side of the house facing the ocean and Haul Road portion of the California Coastal Trail would contain numerous windows along a nearly continuous row facing west, and represents a significant glass surface area of more than 400 square feet. Because much of the Haul Road is located to the west and southwest of the approved residence, the potential for glare off the windows from the late afternoon sun is very significant. Glare emanating from the proposed residential development would be inconsistent with the requirements of LUP Policy 3.5-1 and 3.5-3 that new development in highly scenic areas be sited and designed to protect views to and along the ocean and scenic coastal areas.

Therefore, the Commission finds that the project as proposed is inconsistent with LUP Policies 3.5-1, 3.5-3, and CZC Section 20.504.015(C)(1) as the proposed development would block views to the ocean from Highway One and would interfere with views of the scenic coastal area from the Haul Road and parts within the dunes of MacKerricher State Park. The Commission further finds that trees planted to achieve visual screening of the proposed development from public views from Highway One would totally block views to the ocean from the highway inconsistent with the requirements of CZC Section 20.504.015(C)(10) that trees planted for visual screening purposes not interfere with coastal views and/or ocean views from public areas. As the proposed project is inconsistent with these policies and standards of the certified LCP, the coastal development permit application must be denied.

b. Ensuring New Development is Compatible and Subordinate to the Character of the Setting

LCP Policies

Policy 3.5-1 states in applicable part:

New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting [emphasis added].

LUP Policy 3.5-3 states in applicable part:

The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as “highly scenic areas,” within which new development shall be subordinate to the character of its setting. Any development permitted in these areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes [emphasis added].

- *The entire coastal zone from the Ten Mile River estuary (including its wooded slopes, wetlands, dunes and ocean vistas visible from Highway 1) north to the Hardy Creek Bridge, except Westport Beach Subdivision which is a recognized subdivision containing parcels of approximately 20 acres in size covered by Policy 4.2-1 and is East of Highway 1.*

...

[Note: The foregoing portion of LUP Policy 3.5-3 is implemented verbatim in Coastal Zoning Code Section 20.504.015(A)]

LUP Policy 3.5-3 in applicable part states:

New development should be subordinate to natural setting and minimize reflective surfaces. ...

CZC Section 20.504.015(C)(3) in applicable part states:

New development shall be subordinate to the natural setting and minimize reflective surfaces. ...

Discussion

LCP Policies 3.5-1, 3.5-3 and CZC Section 20.504.015(A) require that new development in highly scenic areas such as the subject property be subordinate to the character of its setting, and that any development permitted in highly scenic areas provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes. In addition, pursuant to LUP Policy 3.5-3 and CZC Section 20.504.015(C)(3), new development must be subordinate to the natural setting and minimize reflective surfaces. The subject property is within an area designated as highly scenic.

As discussed above, the project as proposed would be visible from Highway One and would block views toward the ocean. The required landscaping would provide a visual screen consisting of thickly planted shore pine and Monterey cypress at a height of 30-90 feet for a length of nearly 500 feet along Highway One. Although intended to block views of the residential structures from the highway, the required landscaping would also block public views to the ocean from Highway One. Additionally, the landscaping requirement of the approved development would place a very large swath of tall coniferous trees in the coastal terrace prairie vegetation community between the highway and the residence resulting in both a visually and ecologically incompatible mismatch of vegetation types. The landscape screening as proposed, would result in an incongruous island of 30 to 90-foot-tall trees surrounded by low growing grasses and brush associated with coastal terrace prairie and sand dunes. This effect would be most noticeable from the highway, where the coastal prairie, sand dunes and ocean form the backdrop of the view. This effect would be less when viewed from the Haul Road and the sand dunes as the forested ridgeline to the east of Highway One forms more of the backdrop of the view. Rather than blending with the natural landscape, this proposed development with its incongruity of landscape types would stand out inconsistent with the requirements of LCP Policies 3.5-1, 3.5-3 and CZC Section 20.504.015(A) that development in highly scenic areas be subordinate to the character of its setting.

The character of the surrounding area is distinctive for its openness and unique expanse of sand dune habitat (Exhibit No. 8). Looking southeast (landward) from the Haul road toward the subject parcel, the stand of *Eucalyptus* trees on the subject property blends into an unbroken swath of coastal forest to the south, with a view of the Ten Mile Dunes in the foreground. Looking to the northeast (landward) from the Haul Road toward the subject parcel, the Ten Mile Dunes in the foreground are set against forested hills and rolling grasslands further in the background east of Highway One. Though they appear small, the location of the story poles where the proposed residential structure would be built, are visible with the naked eye from the Haul Road. The construction of a house in this

location would not be subordinate to the character of the existing natural setting since there are no other residential structures visible in the vicinity, and there are only minimal agriculturally related structures in the vicinity.

The natural setting would be affected by a nearby development proposal that has been approved but not yet built. On May 12, 1998, the Commission approved with conditions a 20-unit visitor serving facility on property located immediately east of the subject parcel across Highway One (See Exhibit No. 3). This approved development consists of seven separate buildings that would serve as the guest rooms, two with five units each, and five with two units each. A managers residence, reception area, and meeting room would be contained within a separate two-story structure. Another separate building would provide a laundry, storage, and employee facilities. The approved project would be set back from the highway about 300 feet, and the buildings would be arranged along the contour of the slope at a height of approximately 30 feet above the height of the highway at the driveway entrance. The visitor-serving facility site would be partially screened from view to the east along much of the highway frontage by roadside shrubs, but would be visible for about a half-mile stretch of highway, mostly north of the driveway entrance, and mostly for southbound motorists.

In approving the project, the Commission found that the inn would include several two-story structures with barn-type rooflines consistent with the surrounding rural, agricultural area, but imposed several special conditions to further reduce adverse visual impacts of the development on scenic coastal resources. So that the proposed structures would be screened from Highway One, consistent with LUP Policy 3.5-5, the Commission attached Special Condition No. 2, which included a tree maintenance program and required submittal of a landscaping plan that provides for the planting of an evergreen screen of drought-tolerant native or naturalized trees and/or shrubs along the western property line and along the north-facing side of the structures and parking lot to screen the project from views to the east along Highway One. When screened from view, the proposed development will be barely visible from Highway One and would appear in character with the surrounding undeveloped area and landscape as views from the west are toward the tree covered hillsides that form the backdrop to the inn's setting. The approved landscape plan requires 20 shore pine trees to be planted along the western fence line of the property. As mentioned earlier, shore pine can grow to a height of 20-30 feet, and the approved (but not yet constructed) inn would be built to a height of approximately 30 feet above the height of the highway at the driveway entrance. Thus, the inn would be substantially screened by the shore pine to be planted as a part of the approved landscape plan for the permitted development on the east side of the highway. Additionally, the combination of landscaping measures required to visually screen both the 20-unit visitor serving facility east of the highway previously approved by the Commission, as well as the subject single-family residence as proposed

west of the highway would substantially screen from public view the 20-unit visitor serving facility looking from the Haul Road portion of the California Coastal Trail, and points within the State Park between the Haul Road and Highway One. Thus, only the currently proposed single-family residence would be substantially visible from the Haul Road trail and other locations within the park as a conspicuous development in the vicinity, inconsistent with the requirements of LCP Policies 3.5-1, 3.5-3 and CZC Section 20.504.015(A) that development in highly scenic areas be subordinate to the character of its setting.

Furthermore, as noted above, the residence as proposed includes a substantial amount of window glass that would very likely reflect the sun for extended periods of time from mid-day to sunset as viewed from the Haul Road portion of the California Coastal Trail (Exhibit Nos. 3, and 5, Pages 4 & 5). The glass windows along the nearly 100-foot-west-facing façade are set at many different angles in numerous rooms of the approved house. This nearly continuous row of windows adds up to more than 400 square feet of glass surface. As the sun's angle of incidence changes during the afternoon, the sequenced window reflection from the approved development would be long lasting. There is a high probability that glaring reflections of sunlight could be visible from the Haul Road and beach late in the day when the sun is near the horizon. The use of "non-reflective" glass might help mute glare from the numerous windows of the proposed house, but "non-reflective" glass usually means glass that does not have a mirrored surface, and is often considered to be ordinary glass, which does result in sunlight reflection, especially bright sunshine. In other words, "non-reflective glass" does not eliminate all reflected light, and some reflection of the sun's rays from the glazed surfaces of the residential development would occur. The windows would still be reflective surfaces. Since the residence as proposed would have a very large amount of window that could produce glare that would affect public access users within the adjoining state park, the proposed project is inconsistent with the requirements of LUP Policy 3.5-3 and CZC Section 20.504.015(C)(3) that new development be subordinate to the natural setting and minimize reflective surfaces.

Therefore, the Commission finds that the project as proposed is inconsistent with LUP Policies 3.5-1, 3.5-3 and CZC Section 20.504.015(A) that new development be subordinate to the character of its setting and with the requirements of LUP Policy 3.5-3 and CZC Section 20.504.015(C)(3) that new development minimize reflective surfaces and must be denied.

c. **Siting Development In or Near Wooded Areas Rather Than Open Areas**

LCP Policies

LUP Policy 3.5-4 states in applicable part:

Buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. Except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists.

...

Minimize visual impacts of development on terraces by (1) avoiding development in large open areas if alternative site exists; (2) minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms; (3) provide bluff setbacks for development adjacent to or near public areas along the shoreline; (4) design development to be in scale with rural character of the area [emphasis added].

CZC Section 20.504.015(C) establishes development criteria for designated highly scenic areas, providing in applicable part:

...

(3) *New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings*

...

(5) *Buildings and building groups that must be sited in highly scenic areas shall be sited:*

(a) *Near the toe of a slope;*

(b) *Below rather than on a ridge; and*

(c) *In or near a wooded area [emphasis added].*

...

(7) *Minimize visual impacts of development on terraces by the following criteria:*

(a) *Avoiding development, other than farm buildings, in large open areas if alternative site exists;*

- (b) Minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms;
- (c) Provide bluff setbacks for development adjacent to or near public areas along the shoreline [emphasis added];
- (d) *Design development to be in scale with rural character of the area. ...*

Discussion

LUP Policy 3.5-4 and CZC Section 20.504.015(C) require that if an alternative site exists, buildings that must be sited within a highly scenic area must be sited in or near the edge of a wooded area and concentrated near existing major vegetation rather than being sited in the middle of large open areas. As described above, the proposed project involves development of a residence in an open coastal terrace prairie setting, even though a residence could be sited near the edge of forested areas of the property.

As discussed above, the subject parcel was established in its current configuration in 1994, pursuant to a County-approved Coastal Development Boundary Line Adjustment. A condition of the permit delineated two building envelopes for the subject property for the purpose of protecting ESHA. The two building envelopes, however, had not yet been evaluated for purposes of visual resource protection. The proposed building site for the subject development is located in the more northerly building envelope situated in the open coastal terrace prairie bounded on the west and north by extensive coastal sand dunes comprising the Inglenook Fen—Ten Mile Dunes Natural Preserve and MacKerricher State Park, on the south by a riparian zone, and on the east by Highway One. The other approved building envelope for the property is situated to the south and is bounded on the west by a tall stand of *Eucalyptus* trees, on the north by a riparian zone, and on the east by Highway One (Exhibit Nos. 3 and 4).

The public views that would be affected by the development proposed on the more northerly building envelope would be significantly different than for development on the southerly building envelope. While the northerly building envelope is located in a very open setting with the State Park, sand dunes, and ocean in the background as viewed west from Highway One, the southerly building envelope is located in a wooded setting with a thick stand of mature *Eucalyptus* trees in the immediate background and no view of the ocean or sand dunes from the highway. The proposed residential development in the northern building envelope would appear very prominent looking south from certain areas within the Inglenook Fen—Ten Mile Dunes Natural Preserve and MacKerricher State Park, and looking east from the Haul Road. In contrast, if development of the residence were to occur in the southern building envelope, the residence

would be well screened from public views by the *Eucalyptus* grove and the strip of riparian vegetation growing between that building envelope and the park. In addition, because of the backdrop of trees, additional trees could be planted in front of a residence built within the southern building envelope in a manner that would not look incongruous with surrounding vegetation and habitats as the proposed vegetative screen would appear in the northerly building envelope. As discussed in the alternatives finding below, it would be feasible to develop a residence consistent with the certified LCP in this alternate building site.

Given the existence of this alternate building envelope adjacent to a wooded area, development of the residence as proposed in a building envelope that is not near a wooded area where the visual impacts would be significantly reduced is inconsistent with the LCP requirement that if an alternative site exists, buildings sited within a highly scenic area shall be sited in or near the edge of a wooded area rather than in the middle of large open areas. Therefore, the Commission finds that the project as proposed is inconsistent with LUP Policy 3.5-4 and CZC Section 20.504.015(C) and must be denied.

d. **Protection of ESHA Resources**

LCP Policies

LUP Policy 3.1-7 in applicable part states:

A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development...

...

LUP Policy 3.1-10 states:

Areas where riparian vegetation exists, such as riparian corridors, are environmentally sensitive habitat areas and development within such areas shall be limited to only those uses which are dependent on the riparian resources. All such areas shall be protected against any significant disruption of habitat values by requiring mitigation for those uses which are permitted. No structure or development, including dredging, filling, vegetation removal and grading, which could degrade

the riparian area or diminish its value as a natural resource shall be permitted in the Riparian Corridor except for:

- *Channelizations, dams, or other substantial alterations of rivers and streams as permitted in Policy 3.1-9;*
- *pipelines, utility lines and road crossings, when no less environmentally damaging alternative route is feasible;*
- *existing agricultural operations;*
- *removal of trees for disease control, public safety purposes, or for firewood for the personal use of the property owner at his or her residence. Such activities shall be subject to restrictions to protect the habitat values [emphasis added].*

Section 20.496.020 of the Coastal Zoning Ordinance states in applicable part:

ESHA- Development Criteria

- (A) *Buffer areas. A buffer shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from degradation resulting from future developments and shall be compatible with the continuance of such habitat areas. ...*

Discussion:

LUP Policy 3.1-7 requires that buffers be established to protect ESHA from significant degradation resulting from future developments on the property. LUP Policy 3.1-10 requires that riparian ESHA be protected against any significant disruption of habitat values. CZC Section 20.496.020 requires that buffers be established to protect the environmentally sensitive habitat from degradation resulting from future developments and be compatible with the continuance of such habitat areas.

As discussed previously, the subject property contains riparian ESHA with a riparian plant community that is associated with a small, unnamed, east-to-west flowing drainage located approximately halfway along the parcel's frontage with the highway. The drainage originates on the parcel immediately to the east of Highway One, enters the property through a culvert under the highway, and eventually disappears under the sand dunes to the west. Riparian species represented along this drainage include willow, wax myrtle, berries, brush, grasses and associated species. The subject property also contains sand dune ESHA that is mostly composed of un-stabilized sand with sparse vegetation. The

property is immediately adjacent to MacKerricher State Park and the Inglenook Fen—Ten Mile Dunes Natural Preserve, which is a distinct area of outstanding natural and scientific significance established to preserve rare or endangered plant and animal species and their supporting sand dune ecosystem. The Ten Mile Dunes complex, which includes Inglenook Fen, is a natural heritage treasure of statewide significance. It is comprised of a unique, relatively pristine native dune and wetland ecosystem that supports federally and state listed species including Menzies' wallflower (*Erysimum menziesii* spp. *menziesii*), and Howell's spineflower (*Chorizanthe howellii*), as well as over thirty special status plants that are sensitive species of concern constituting rare plant ESHA.

In 1994, as discussed above, the subject property was created from Boundary Line Adjustment #CDB 31-93. This boundary line adjustment combined two separate legal parcels in the easterly portion of the adjacent ownership, and established the approximately 64 ½-acre subject property west of Highway One as a separate parcel. One of the conditions of approval required a map depicting building envelope buffers of 100 feet from the edge of all environmentally sensitive habitat areas to be on file with the Mendocino County Department of Planning and Building Services as mitigation for potential impacts to the various environmentally sensitive habitat areas including sand dunes and riparian areas. The condition also required that a notation be placed within the new legal description of the property stating that development be limited to that area designated as a building envelope as noted on the CDB 31-93 map on file with the County. In compliance with this condition of approval, two building envelopes were created as depicted on the map included as Exhibit No. 4. These two building envelopes were established for the purpose of protecting ESHA, but had not yet been evaluated for purposes of visual resource protection. Both building envelopes are located along the eastern edge of the parcel within 50 feet of the highway. The northernmost approved building envelope is the one in which the applicant proposes to construct a single-family residence. This building envelope observes 100-foot buffers from the sand dunes ESHA along the western edge, and also along the approximately 400-foot-long southern edge that borders the riparian ESHA.

Consistent with LUP Policies 3.1-7, 3.1-10, and CZC Section 20.496.020 the applicant conducted a botanical study to investigate whether any ESHA resources exist on the property in the vicinity of the proposed development that would need additional buffers in addition to those as established previously to protect the sand dunes and riparian habitat. The botanical survey did not discover any new additional ESHA resources needing increased buffer widths, and the previously-established buffers were determined to be adequate. The applicant has proposed development that would adhere to the 100-foot buffer areas previously established by the boundary line adjustment as depicted on the building envelope map on file

with the Mendocino County Department of Planning and Building Services (Exhibit No. 4).

No invasive exotic vegetation is specifically proposed to be planted as part of the residential development. However, not all of the plant species to be utilized in the landscaping for the proposed development have been specified, and the Commission notes that if invasive exotic vegetation were used as part of the landscaping, these species could easily spread to the riparian and dune habitat and out-compete rare plants that exist in the adjoining area seriously jeopardizing ESHA resources inconsistent with the provisions of the certified LCP designed to protect ESHA resources including LUP Policies 3.1-7, 3.1-10, and CZC Section 20.496.020.

The proposed project could be made consistent with the LCP ESHA policies and standards if a special condition of approval were imposed prohibiting invasive exotic vegetation from being planted as a part of the residential landscaping. However, as discussed in Findings a, b, and c above, the Commission finds that the proposed residential development is not consistent with certain other LCP policies regarding protection of visual resources including 1) policies requiring the protection of views to and along the coast, 2) policies requiring that new development be subordinate to the character of the setting, and 3) policies requiring that development be sited in or near wooded areas rather than open areas. Therefore, the proposed development must be denied.

e. Suitable Site for Septic System

LCP Policies

LUP Policy 3.8-1 states:

Highway 1 capacity, availability of water and sewage disposal system and other known planning factors shall be considered when considering applications for development permits.

On the rural side of the Urban/Rural Boundary, consideration shall be given to Land Use Classifications, 50% buildout, average parcel size, availability of water and solid and septage disposal adequacy and other Coastal Act requirements and Coastal Element policies. Highway capacity impacts shall be considered in determining land use classification and density changes.

LUP Policy 3.9-1 in applicable part states:

One housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that adequate access, water, and sewage disposal capacity exists and the proposed development is consistent with all applicable policies of this Coastal Element and is in compliance with existing codes and health standards. Determination of service capacity shall be made prior to the issuance of a coastal development permit.

CZC Section 20.532.095—Required Findings for all Coastal Development Permits—in applicable part states:

- (A) *The granting or modification of any coastal development permit by the approving authority shall be supported by findings which establish that:*
- (1) *The proposed development is in conformity with the certified local coastal program; and*
 - (2) *The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and*
 - (3) *The proposed development is consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of this Division and preserves the integrity of the zoning district; and*
 - (4) *The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act...*

Discussion:

LUP Policy 3.8-1 requires that adequate sewage disposal be considered when reviewing development permits. LUP Policy 3.9-1 requires that sewage disposal capacity exist, and that a determination of service capacity be made prior to the issuance of a coastal development permit. CZC Section 20.532.095 requires that the granting of any coastal development permit be supported by findings which establish that the proposed development will be provided with adequate utilities, and that the proposed development will not have any significant adverse impacts on the environment. These policies reflect the requirements of Section 30250(a)

of the Coastal Act that new development be located in areas able to accommodate it.

In general, a site may be approved for development of an onsite sewage disposal system if it can be found that: (1) it is at least 100 feet from any well, water body, or major break in terrain; (2) it is located on ground with less than a 30 percent slope or where there is less than 5 feet of soil below the trench if the natural grade exceeds a 20 percent slope; and (3) it meets established soil depth, texture and percolation rate criteria.

In 1994, Mendocino County approved Boundary Line Adjustment #CDB 31-93, which established the present configuration of the 64 ½-acre subject property. A Site Evaluation Report demonstrating the adequacy for on-site sewage disposal on the property was prepared in 1994 as a part of that development approval. On October 23, 2003, the County approved the subject development that has been appealed to the Commission for a single-family residence on the property, and as requested by the Mendocino County Division of Environmental Health, imposed a special condition requiring that the applicant update the sewage disposal system to meet current requirements. However, no information exists in the local record that suggests the sewage disposal system could not be conformed to current Health Department requirements. Because the 64 ½-acre property was determined to have adequate sewage disposal capacity at the time of the boundary line adjustment, and there is no information existing that suggests the proposed sewage disposal system could not be modified to conform to current Health Department standards, there is a reasonable expectation that the applicant would be able to rely on a private, on-site sewage disposal system to adequately serve the development. The fact that the substrate of the building envelopes is very sandy material strongly suggests that there would be no problem in achieving very adequate leach field percolation.

The Commission finds the proposed residential development could be made consistent with the requirements of LUP Policy 3.8-1 that adequate sewage disposal be considered when reviewing development permits, LUP Policy 3.9-1 that sewage disposal capacity exist, and CZC Section 20.532.095 that a determination of service capacity be made prior to the issuance of a coastal development permit, if a special condition of approval were imposed to require submittal of evidence that the proposed sewage disposal system has been modified to meet current County Department of Environmental Health requirements. However, as discussed in Findings a, b, and c above, the Commission finds that the proposed residential development is not consistent with certain other LCP policies regarding protection of visual resources including 1) policies requiring the protection of views to and along the coast, 2) policies requiring that new development be subordinate to the character of the setting, and

3) policies requiring that development be sited in or near wooded areas rather than open areas. Therefore, the proposed development must be denied.

f. **Availability of Water**

LCP Policies

LUP Policy 3.8-1 states:

Highway 1 capacity, availability of water and sewage disposal system and other known planning factors shall be considered when considering applications for development permits.

On the rural side of the Urban/Rural Boundary, consideration shall be given to Land Use Classifications, 50% buildout, average parcel size, availability of water and solid and septage disposal adequacy and other Coastal Act requirements and Coastal Element policies. Highway capacity impacts shall be considered in determining land use classification and density changes.

LUP Policy 3.9-1 in applicable part states:

One housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that adequate access, water, and sewage disposal capacity exists and the proposed development is consistent with all applicable policies of this Coastal Element and is in compliance with existing codes and health standards. Determination of service capacity shall be made prior to the issuance of a coastal development permit.

CZC Section 20.532.095—Required Findings for all Coastal Development Permits—in applicable part states:

(A) *The granting or modification of any coastal development permit by the approving authority shall be supported by findings which establish that:*

(1) *The proposed development is in conformity with the certified local coastal program; and*

(2) *The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and*

- (3) The proposed development is consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of this Division and preserves the integrity of the zoning district; and*
- (4) The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act...*

Discussion

LUP Policy 3.8-1 requires that the availability water be considered when reviewing development permits. LUP Policy 3.9-1 requires that adequate water exists, and that a determination of service capacity be made prior to the issuance of a coastal development permit. CZC Section 20.532.095 requires that the granting of any coastal development permit be supported by findings which establish that the proposed development will be provided with adequate utilities, and that the proposed development will not have any significant adverse impacts on the environment.

The subject property is located within an area designated with Sufficient Water Resources as mapped by the Department of Water Resources in the 1982 Coastal Groundwater Study. Proof of adequate water has already been demonstrated by the drilling of a test well in 1995 and the performance of a pump test done in conformance with the requirements of the Mendocino County Division of Environmental Health requirements. No adverse impact to groundwater resources would occur from conversion of the test well to a production well.

Therefore, as the evidence submitted by the applicant for purposes of the Commission's *de novo* review demonstrates that adequate water is available to support development of a single-family residence on the property, the Commission finds the proposed residential development is consistent with the provisions of LUP Policies 3.8-1 and 3.8-9 and CZC Section 20.532.095 concerning proof of availability of water for development. However, as discussed in Findings a, b, and c above, the Commission finds that the proposed residential development is not consistent with certain other LCP policies regarding protection of visual and ESHA resources including 1) policies requiring the protection of views to and along the coast, 2) policies requiring that new development be subordinate to the character of the setting, and 3) policies requiring that development be sited in or near wooded areas rather than open areas. Therefore, the proposed development must be denied.

g. Public Access

Section 30210 of the Coastal Act requires that maximum public access shall be provided consistent with public safety needs and the need to protect natural resource areas from overuse. Section 30212 of the Coastal Act requires that access from the nearest public roadway to the shoreline be provided in new development projects except where it is inconsistent with public safety, military security, or protection of fragile coastal resources, or adequate access exists nearby. Section 30211 requires that development not interfere with the public's right to access gained by use or legislative authorization. In applying Sections 30210, 30211 and 30212, the Commission is also limited by the need to show that any denial of a permit application based on these sections, or any decision to grant a permit subject to special conditions requiring public access, is necessary to avoid or offset a project's adverse impact on existing or potential access.

As discussed above, several trails lead west from the Highway One parking area at the "mixing table" through the coastal terrace prairie and sand dunes on State Park property and enable public access to the Ten Mile Dunes Natural Preserve, the Haul Road portion of the California Coastal Trail, and the shoreline. Although the Ten Mile Dunes Natural Preserve is an ecologically sensitive resource, and no dunes management plan has been adopted for this area, there are no current restrictions against accessing the park or Haul Road in this manner. Many people currently use these vertical access trails to enter State Parkland, and the Department of Parks and Recreation has placed trail signage at this location to inform the public that they are on State Park property.

Some of these trails appear to cross the applicant's property. However, the proposed residential development would not block or interfere with these existing trails since the trails are located several hundred feet away from the proposed development. In addition, development of the proposed single-family residence would not increase the demand for public access. Because the proposed development would not affect existing access to the shoreline, or increase the demand for access to the shoreline, the development would have no adverse impact on public access. Therefore, the Commission finds that the proposed development does not have any significant adverse effect on public access, and that the proposed development without new public access is consistent with the coastal access requirements of Coastal Act Sections 30210, 30211, and 30212. However, as discussed in Findings a, b, and c above, the Commission finds that the proposed residential development is not consistent with certain other LCP policies regarding protection of visual and ESHA resources including 1) policies requiring the protection of views to and along the coast, 2) policies requiring that new development be subordinate to the character of the setting, and 3) policies requiring that development be sited in or near wooded areas rather than open areas. Therefore, the proposed development must be denied.

h. Alternatives

Denial of the proposed permit will not eliminate all economically beneficial or productive use of the applicant's property or unreasonably limit the owner's reasonable investment backed expectations of the subject property. Denial of this amendment request to develop a single-family residence in the northernmost approved building envelope would still leave the applicant available alternatives to use the property in a manner that would be consistent with the policies of the LCP.

As discussed previously, the applicant currently has an alternate building envelope available on the property for locating a single-family residence. This alternate building envelope was established for purposes of protecting ESHA pursuant to a previous permit granted for a boundary line adjustment that reconfigured the boundaries of the subject property. Development of a residence in this alternate location would be both feasible and consistent with Mendocino County certified LCP policies and standards including those that govern visual resource protection, provision of adequate utilities (water and septic) to serve the development, ESHA protection, and public access.

Adverse visual impacts would be significantly reduced by siting the single-family residence in the alternate building envelope as (1) the development would be located near the edge of a wooded area rather than in the middle of large open area, (2) the development would be subordinate to the character of its setting by better fitting into its surroundings rather than standing out as an incongruous island in an open area, (3) the placement of the structure where a grove of trees would separate the home from most public areas would minimize concerns about reflective surfaces, (4) the residence would not block views to the ocean from Highway One, and (5) the residence would not interfere with views of the scenic coastal area from the Haul Road and areas within the dunes of MacKerricher State Park. Furthermore, any trees planted to screen the development from public views from Highway One would not block views to the ocean from the highway as views toward the ocean through the alternate site are already blocked by the mature *Eucalyptus* grove.

Provision of adequate sewage disposal capacity and water would be available to serve the development sited at the alternate building envelope. As discussed above, there is a reasonable expectation that the applicant would be able to rely on a private, on-site sewage disposal system to adequately serve the development. The fact that the substrate of both building envelopes is very sandy material strongly suggests that there would be no problem in achieving very adequate leach field percolation. The 64 ½-acre property was determined to have adequate sewage disposal capacity at the time of the boundary line adjustment that created

the parcel, and there is no information existing that suggests a sewage disposal system could not conform to current Health Department standards. The availability of adequate water to serve the development has already been demonstrated by the drilling of a test well in 1995, and the performance of a pump test done conforming with the requirements of the Mendocino County Division of Environmental Health requirements. No adverse impact to groundwater resources would occur from conversion of the test well to a production well. Water from the existing well could be piped to the alternate building site, or another well could likely be drilled in the alternate building envelope.

There is adequate room for construction of a single-family residence in the alternate building envelope while also achieving conformance with sand dune and riparian ESHA buffers that have been established to protect sensitive habitat from significant adverse impacts associated with development on the property. Improvement of a driveway to serve a residence sited in the alternate building envelope could be approved, since there is already an existing, culverted, road that crosses through the riparian ESHA and over the small drainage separating the two building envelopes.

Public access would not be adversely impacted by development of a single-family residence in the alternate building envelope. There is no evidence that any trails exist in the vicinity of the alternate building envelope (unlike the other building envelope where trails used by the public to access the State Park and shoreline are within a few hundred feet of the proposed project) and therefore, residential development sited in the alternate location would not block or interfere with any trails since the trails that are located on the property are a great distance away from the alternate building site. In addition, development sited in the alternate location would not increase the demand for public access. Because development of a single-family residence in the alternate location would not affect existing access to the shoreline, or increase the demand for access to the shoreline, development at the alternate site would have no adverse impact on public access.

Even if the applicant chose not to construct a single-family residence on the property, the applicant would still retain economically beneficial or productive use of the property in other respects. The subject property is zoned as rangeland, and the applicant can use the approximately 64 ½-acre holding for a number of agricultural uses specified as principal permitted uses in the RL zone including grazing and forage for livestock and raising of crops, whether for an agricultural operation conducted by the owner himself, or through a lease to another rancher who could utilize the land in combination with other grazing lands in nearby areas. After securing a coastal development use permit from the County, the applicant could also utilize this approximately 64 ½-acre portion of the property for any relevant conditionally permitted agricultural use related to and compatible with ranching such as recreational use. All of the above-referenced uses allow the

owner economic use of the subject property without developing the northernmost building envelope for residential use.

Therefore, the Commission finds that feasible alternatives to the proposed project exist for the applicant to make economically beneficial or productive use of the property in a manner that would be consistent with the policies of the certified LCP.

Conclusion of Part II: De Novo Action on Appeal—Denial

The Commission finds that as discussed above, the project as proposed is inconsistent with the Mendocino County certified LCP because the proposed project would not (1) protect views to and along the coast, (2) ensure new development is compatible and subordinate to the character of the setting, and (3) site the development in or near wooded areas rather than open areas.

The Commission finds that there are no conditions that could be applied that could make the proposed project consistent with the visual resource protection provisions of LUP Policies 3.5-1, 3.5-3, 3.5-4, and CZC Sections 20.504.015(C)(10) and 20.504.015(A)(4) as discussed above. Therefore, the Commission finds that the permit must be denied.

C. CALIFORNIA ENVIRONMENTAL QUALITY ACT.

Section 13906 of the California Code of Regulation requires Coastal Commission approval of a coastal development permit application to be supported by a finding showing that the application, as modified by any conditions of approval, is consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Public Resources Code Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse impact that the activity may have on the environment.

The Commission incorporates its findings on conformity with LCP policies at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report.

As discussed herein, in the findings addressing the consistency of the proposed project with the certified LCP, the proposed project is not consistent with the policies of the certified LCP regarding visual resource protection, including policies requiring protection of views to and along the coast, ensuring new development is compatible and subordinate to the character of the setting, and requiring site development in or near wooded areas rather than open areas. The Commission finds that there are no conditions that could be

applied that could make the proposed project consistent with the visual resource protection provisions of LUP Policies 3.5-1, 3.5-3, 3.5-4, and CZC Sections 20.504.015(C)(10) and 20.504.015(A)(4) as discussed above.

Also, as discussed above in the findings addressing project alternatives, there are feasible mitigation measures and feasible alternatives available which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project cannot be found consistent with the requirements of the Coastal Act to conform to CEQA.

Exhibits:

1. Regional Location Map
2. Vicinity Map
3. Vicinity Aerial Photo
4. Parcel Map
5. Site Plan and Elevations
6. Notice of Final Action & Staff Report
7. Appeal
8. Photographs
9. Correspondence